

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

UNITED STATES OF AMERICA, . Case No. 13-20834  
Plaintiff, .  
v. . Bay City, Michigan  
January 23, 2014  
TIMOTHY HEATH FINDLAY, .  
Defendant. . (Hon. Thomas L. Ludington)  
. . . . .

GUILTY PLEA  
BEFORE THE HONORABLE CHARLES E. BINDER  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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ASSISTANT U.S. ATTORNEY  
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For the Defendant: KENNETH R. SASSE  
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1 Bay City, Michigan

2 Thursday, January 23, 2014

3 At about 2:33 P.M.

4 - - -

5 (Call to order of the court)

6 THE COURT: This is the case of United States  
7 versus Timothy Findlay, Case Number 13-20834.

8 The defendant is present with counsel.

9 I have received an Order of Reference for the  
10 Taking of a Plea from United States District Judge Ludington,  
11 a Consent to Enter Guilty Plea before Magistrate Judge signed  
12 by the defendant and both counsel, and I have reviewed a Rule  
13 11 Plea Agreement in the matter.

14 May I, first of all, have the appearance of defense  
15 counsel?

16 MR. SASSE: Good afternoon, your Honor.  
17 Kenneth Sasse appearing on behalf of Timothy Findlay.

18 THE COURT: Thank you.

19 You are Timothy Findlay. Is that correct?

20 THE DEFENDANT: Yes, it is.

21 THE COURT: It appears from these documents that  
22 you wish to enter a plea of guilty to some charges, and it  
23 appears from this consent that you're willing to give up your  
24 right to have this plea taken and considered by the U.S.  
25 District Judge, and you're willing to have the plea taken and

1 considered today by me. Is that correct?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Now, you signed this written consent  
4 five or six days ago. Do you remember this?

5 THE DEFENDANT: Yes, I do.

6 THE COURT: Do you stand by that consent today?

7 THE DEFENDANT: Yes, I do.

8 THE COURT: Mr. Sasse, any objection to my swearing  
9 the defendant?

10 MR. SASSE: No, your Honor.

11 THE COURT: All right.

12 Mr. Findlay, would you raise your right hand,  
13 please?

14 **TIMOTHY HEATH FINDLAY, DEFENDANT, SWORN**

15 THE COURT: All right. Thank you.

16 **EXAMINATION**

17 BY THE COURT:

18 Q. Now, having been sworn, you have to tell the truth. Any  
19 false statements you make could be used against you in a  
20 separate prosecution for perjury or for the making of false  
21 statements. Do you understand this?

22 A. Yes, I do.

23 Q. Now, may I have your full name for the record, please?

24 A. Timothy Heath Findlay.

25 Q. How old are you, sir?

1 A. Forty.

2 Q. How far have you gotten in school?

3 A. Eleventh grade.

4 Q. Have you been able to read and understand the documents  
5 that Mr. Sasse has been showing you?

6 A. Yes, I have.

7 Q. Have you been able to understand the things he's been  
8 talking about?

9 A. Yes, I have.

10 Q. Are you under the influence of any medications or  
11 anything that would give you trouble in understanding what's  
12 going on today?

13 A. No.

14 Q. Are you under the regular care of a doctor for any  
15 medical condition that might have an impact on your ability  
16 to understand what's going on today?

17 A. No.

18 THE COURT: The record should reflect my conclusion  
19 that the defendant is able to enter a knowing plea. Do the  
20 attorneys agree?

21 MR. KRANZ: Yes, your Honor.

22 MR. SASSE: Yes, your Honor.

23 THE COURT: Thank you.

24 BY THE COURT:

25 Q. Mr. Findlay, you are charged in Count Two of an

1 indictment with threatening to kill the President. Do you  
2 understand this charge?

3 A. Yes, I do.

4 Q. The charge is a felony. It has penalties of up to five  
5 years' imprisonment followed by up to three years of  
6 supervised release, and you could face fines of up to two  
7 hundred fifty thousand dollars. Do you understand this?

8 A. Yes, I do.

9 Q. Now, Mr. Sasse has been representing you throughout the  
10 case. Is that correct?

11 A. Yes.

12 Q. I presume you've had more than one opportunity to talk  
13 to him about all of this.

14 A. Yes, I have.

15 Q. Are you satisfied with his advice and with his service?

16 A. Yes, I am.

17 Q. Good.

18 Now, if I accept your guilty plea, you're going to  
19 be giving up many important rights.

20 As you know, everyone charged with a crime in our  
21 system is entitled to a trial to determine if in fact they  
22 are guilty of the criminal charges against them, and what  
23 this Rule 11 agreement is telling me is that you're willing  
24 to give up your right to a trial and everything that has to  
25 do with a trial. Do you understand this?

1 A. Yes, I do.

2 Q. Specifically, you're giving up your right to plead not  
3 guilty and have a trial. Do you understand this?

4 A. Yes, I do.

5 Q. You're giving up your right at a trial to be presumed  
6 innocent and your right to require that the government prove  
7 you guilty, and that is guilty beyond a reasonable doubt and  
8 guilty of every element -- that is every part -- of the  
9 charge. Do you understand this?

10 A. Yes, I do.

11 Q. You're giving up your right through Mr. Sasse to  
12 question and probe and cross-examine witnesses the government  
13 would bring against you. Do you understand this?

14 A. Yes.

15 Q. You're giving up your right to have the Court order  
16 witnesses you might need for your defense to come forward and  
17 testify at a trial. Do you understand this?

18 A. Yes.

19 Q. You're also giving up your right to remain silent and  
20 not have your silence used against you during a trial. Do  
21 you understand this?

22 A. Yes.

23 Q. At the same time, you're giving up your right to testify  
24 at a trial if you wish to, and if you did testify, what you  
25 said would be weighed with all the other evidence. Do you

1 understand this?

2 A. Yes.

3 Q. And lastly, you're giving up your separate right to have  
4 a lawyer for the trial, and if you could not afford one, a  
5 lawyer would be appointed for you at government expense. Do  
6 you understand this?

7 A. I do.

8 Q. All right.

9 Now, in addition to these rights having to do with  
10 a trial, it is entirely likely that if your guilty plea is  
11 accepted, you will be giving up civil rights: the right to  
12 hold public office; the right to serve on a jury; if you're  
13 sent to jail, you'll lose the right to vote while you're in  
14 jail; and you will without doubt lose the right to ever  
15 legally be around firearms again. Do you understand this?

16 A. I do.

17 Q. All right. So having in mind both these civil rights  
18 and the trial rights that we've talked about, what you're  
19 telling me is that you're willing to give up all these rights  
20 as part of this plea agreement. Am I correct?

21 A. Yes.

22 Q. Okay. Now, I presume your willingness to enter a guilty  
23 plea is because of what's in here in the Rule 11 agreement.

24 Am I correct?

25 A. Yes.



1 Q. All right.

2 THE COURT: Mr. Kranz, would you be so kind as to  
3 summarize the agreement for the record, please?

4 MR. KRANZ: Yes, your Honor.

5 The plea of guilty will be to Count Two of the  
6 indictment, charges the defendant with threatening to kill  
7 the President of the United States, in violation of 18  
8 U.S.C., Section 871(a).

9 Elements of that offense are at the top of page  
10 two.

11 Parties agree the following facts are true and a  
12 sufficient basis for the guilty plea:

13 In September 2013, Defendant was in the Ogemaw  
14 County Jail for an unrelated bomb threat charge filed in  
15 state court. During the week of September 8<sup>th</sup>, Defendant  
16 wrote two notes that were read by jail staff. The first note  
17 said, quote: "I want to kill Judge Nobile and the President  
18 with a bomb," end quote.

19 Second note said, quote, "I want to bomb the White  
20 House," end quote.

21 Initially Defendant wrote on the walls of his jail  
22 cell, quote, "Fuckin' kill the President bitches," end quote,  
23 and, quote, "Kill Obama," end quote.

24 On September 13<sup>th</sup>, Findlay told Secret Service Agent  
25 Lee Kuykendall that if he were drunk, he would definitely try

1 and kill the President. Defendant admitted he wanted to kill  
2 Barrack Obama. Further, Defendant stated that once he got  
3 out of prison, he would get a rifle, borrow a car, drive to  
4 Washington, D.C., and kill the President.

5           There's a couple additional stipulations, one that  
6 was slightly modified that has been pen-and-ink changed, and  
7 I can sign that. The defendant and his attorney I believe  
8 have already initialed that, and that one is that Defendant  
9 wrote a letter to the President around 2011 or 2012 saying  
10 that he was going to kill President Obama. Defendant  
11 intended to mail the letter, but a relative talked him out of  
12 sending it; and the second one is November -- in November  
13 2013, Defendant wrote another note which was discovered by a  
14 jail guard which said, quote, "I'm going to kill all the  
15 presidents of the United States," end quote.

16           The Court will find the sentencing factors by a  
17 preponderance of the evidence. There's no sentencing  
18 guideline disputes. Except as provided below, Defendant's  
19 guideline range is twelve to eighteen months.

20           If the Court finds Defendant's criminal history  
21 category is higher than that reflected in the worksheets or  
22 the offense level should be higher because, after pleading  
23 guilty, Defendant makes false statements, withholds  
24 information from Probation, commits a new offense, or  
25 otherwise demonstrates a lack of acceptance of responsibility

1 for his offense or obstructs justice, and if any such finding  
2 results in a higher guideline range, the higher guideline  
3 range becomes the agreed range of the parties.

4 Based on the present circumstances, we're  
5 recommending a two-level reduction for acceptance of  
6 responsibility. We may recommend against this if, after the  
7 guilty plea, we learn of information inconsistent with the  
8 adjustment.

9 Neither party may take a position contrary to any  
10 position that's stated above except as is necessary for the  
11 Court's determination regarding Defendant's criminal history,  
12 acceptance of responsibility, and obstruction of justice.  
13 Breach of this condition will entitle the non-breaching party  
14 to withdraw from the plea agreement.

15 The Court will impose a sentence pursuant to  
16 18 U.S.C., Section 3553, and in doing so, must consider the  
17 sentencing guideline range. There is a cap at the top end of  
18 the sentencing guideline range as determined by Paragraph 2B  
19 of this agreement.

20 A term of supervised release up to three years  
21 shall follow the term of imprisonment.

22 The agreement discussed earlier regarding length of  
23 imprisonment does not apply to any imprisonment that results  
24 from any later revocation of supervised release.

25 Special assessment is a hundred dollars; maximum

1 fine is up to two hundred and fifty thousand dollars.

2 There's no restitution.

3 If the Court accepts the agreement, we will dismiss  
4 Count One, not -- and we also agree not to bring any  
5 additional charges based on any of the conduct reflected in  
6 the attached worksheets in the stipulated facts.

7 Government may withdraw from the agreement if the  
8 Court imposes a sentence below the applicable guideline  
9 range.

10 Defendant may withdraw from the agreement and may  
11 withdraw his guilty plea if the Court decides to impose a  
12 sentence higher than the maximum allowed by the agreement.  
13 This is the only reason for which Defendant may withdraw from  
14 the agreement. If he decides not to withdraw his guilty plea  
15 pursuant to this provision, the sentence the Court imposes  
16 may be greater than that allowed by the agreement.

17 The appeal and collateral attack waiver reads:

18 "Defendant waives the right to appeal his  
19 conviction or sentence on any grounds. If the  
20 sentence imposed is within the guideline range  
21 determined by Paragraph 2B, then the government  
22 agrees not to appeal the sentence but retains its  
23 right to appeal any sentence below that range.

24 "Defendant understands that defendants  
25 generally have the right to attack their

1 convictions and sentences by filing post-conviction  
2 motions, petitions, or independent civil actions.  
3 As part of this agreement, however, Defendant  
4 knowingly and voluntarily waives that right and  
5 agrees not to contest his conviction or sentence in  
6 any post-conviction proceeding, including but not  
7 limited to any proceeding under 28 U.S.C.,  
8 Section 2255."

9 I believe that sums up the key features of the  
10 Rule 11, your Honor.

11 THE COURT: All right.

12 Mr. Sasse, is this your understanding of the  
13 agreement?

14 MR. SASSE: It is, your Honor.

15 THE COURT: Anything further relating to the  
16 agreement you'd wish to put on the record?

17 MR. SASSE: No, your Honor.

18 **EXAMINATION CONTINUING**

19 BY THE COURT:

20 Q. Mr. Findlay, is this your understanding of the  
21 agreement?

22 A. Yes, it is.

23 Q. Did you hear anything just now from the assistant U.S.  
24 attorney that was different than what you understood the  
25 agreement to be?

1 A. No.

2 Q. Have you been promised by anybody in the court or by  
3 your lawyer or the government's lawyer that you will get  
4 probation or a specific sentence in return for a guilty plea?

5 A. No.

6 Q. Has anybody made any promises to you that aren't in this  
7 agreement?

8 A. No.

9 Q. Has anybody used force or threats to try and make you  
10 plead guilty?

11 A. No.

12 Q. These plea agreements are always complicated, and they  
13 always have a lot of citations to statutes, calculations from  
14 the sentencing guidelines and things of that nature. I need  
15 to boil down a couple of the key features of this agreement  
16 to make sure you fully understand the consequences of your  
17 plea. The first has to do with an appeal.

18 If you are sentenced within the range that this is  
19 -- that is stated in this agreement, you will not be able to  
20 appeal what happens to you, ever. Do you understand that?

21 A. Yes, I do.

22 Q. You won't be able to appeal right away nor will you be  
23 able to appeal later on in what's called a motion to vacate,  
24 or a habeas corpus, or a collateral attack. None of those  
25 will be successful. Do you understand that?

1 A. Yes, I do.

2 Q. Okay. As I mentioned, there's calculations, citations,  
3 a number of matters in this agreement dealing with the  
4 sentencing guidelines, and I need to make sure you understand  
5 that what is in here is only a recommendation to  
6 Judge Ludington, who will be the judge who sentences you. Do  
7 you understand that?

8 A. Yes, I do.

9 Q. He can by law do something different. He has the  
10 authority to do what's called depart. Do you understand  
11 that's possible?

12 A. Yes, I do.

13 Q. Okay. And what this all boils down to is that as of  
14 today, none of us know what your actual sentence will be. Do  
15 you understand that?

16 A. Yes, I do.

17 Q. Okay. Are you making this plea voluntarily?

18 A. Yes, I am.

19 Q. Is this an act of your own free will?

20 A. Yes.

21 Q. Okay. Tell me in your own words what you did that makes  
22 you believe that you're guilty of this charge.

23 A. I'm guilty because I'm the one who wrote it on -- on the  
24 walls and said that I was going to kill the President, so,  
25 yeah, I am guilty of this.

1 Q. Okay. It says here that -- that you were in jail in  
2 September of last year on an -- for an unrelated charge. Is  
3 that right?

4 A. Yes.

5 Q. And that you wrote notes about killing a judge as well  
6 as the President. Is that right?

7 A. Yes.

8 Q. And as you mentioned, it says here that you wrote stuff  
9 on the walls of your cell. Is that right?

10 A. Yes, it is.

11 Q. And -- and -- and among the things you wrote were things  
12 like, "Kill Obama," things of that nature. Am I right?

13 A. Yes.

14 Q. Okay. There's also in here a summary of an interview  
15 that you had with a Secret Service agent. Is that correct?

16 A. Yes.

17 Q. Okay. And it says here that you had said that you'd --  
18 you'd be wanting to kill the President if you got the chance.

19 Am I correct?

20 A. Yes.

21 Q. Okay. And the note and the interview, they took place  
22 in the Ogemaw County Jail. Is that right?

23 A. Yes.

24 Q. Okay. What city did you live in before you were in  
25 jail?



1 A. Actually, it's West Branch.

2 Q. Okay. All right. That's good enough for these  
3 purposes.

4 A. Okay. Well, okay.

5 Q. Okay.

6 THE COURT: Mr. Kranz, do you have any other  
7 questions relating to factual basis?

8 MR. KRANZ: No, your Honor.

9 THE COURT: All right.

10 Mr. Sasse, questions relating to factual basis.

11 MR. SASSE: No. Thank you, your Honor.

12 BY THE COURT:

13 Q. Mr. Findlay, we've talked about the charge; we've talked  
14 about the penalty. We've talked about the rights that  
15 everyone has in our system and the rights that you say you're  
16 willing to give up under this plea agreement, and we've  
17 talked about my authority to proceed today, so with all of  
18 that in mind, it's proper now for me to ask you how you plead  
19 to this charge of threatening to kill the President. How do  
20 you plead, sir?

21 A. Guilty.

22 Q. Do you understand the plea you're making?

23 A. Yes, I do.

24 Q. Making this of your own free will.

25 A. Yes.

1 Q. All right.

2 THE COURT: I find that the defendant, from his  
3 demeanor and his answers to my questions, is competent to  
4 tender a plea. I find that the defendant's plea is knowing  
5 and is intelligently made and made after consultation with  
6 counsel. I find that the -- the offense to which the  
7 defendant has pled guilty is supported by an independent  
8 basis in fact that contains each of the essential elements of  
9 the offense, and I will therefore order the preparation of a  
10 Presentence Investigation Report, and I will in addition  
11 recommend to Judge Ludington that the defendant's plea be  
12 accepted, that the defendant be adjudged guilty and have  
13 sentence imposed subject to Judge Ludington's final review  
14 and consideration of the plea agreement under Rule 11(c) of  
15 the Rules of Criminal Procedure.

16 Mr. Kranz, are you satisfied with my compliance  
17 with Rule 11?

18 MR. KRANZ: Yes, your Honor.

19 THE COURT: Mr. Sasse, are you satisfied?

20 MR. SASSE: Yes, your Honor.

21 THE COURT: All right.

22 Mr. Findlay, the next step of your case is the  
23 sentencing process, which begins with an interview between  
24 yourself and a probation officer with Mr. Sasse present.  
25 Probation officer will prepare a Presentence Investigation

1 Report which will be used by Judge Ludington in his decision  
2 as to a sentence.

3           Once that report is completed, you will, first of  
4 all, get your date for sentencing. The completion of the  
5 report also triggers a brief period within which you and  
6 Mr. Sasse can object to the report, talk about things you  
7 think they got wrong, and include information you think they  
8 missed, but your next trial -- or your next court appearance  
9 -- excuse me -- is your sentencing. Do you understand that?

10           THE DEFENDANT: Yes, I do.

11           THE COURT: All right.

12           Mr. Kranz, then anything further as to this  
13 defendant?

14           MR. KRANZ: No, your Honor.

15           THE COURT: Mr. Sasse, anything further?

16           MR. SASSE: No. Thank you.

17           THE COURT: Very well.

18           The defendant remains in custody pending  
19 sentencing.

20           These proceedings are closed, and thank you,  
21 Counsel.

22           THE CLERK: All rise.

23           Court is adjourned.

24           (Proceedings concluded at about 2:52 P.M.)

25   -       -       -

*U.S.A. v. Timothy Heath Findley*  
*January 23, 2014*

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I certify that the foregoing is a correct transcript from the digital sound recording of the proceedings in the above-entitled matter.

<u>s/Karin Dains</u>	<u>February 24, 2014</u>
Karin Dains, Court Transcriber	Date Certified

*Karin Dains – Court Transcriber*